



August 15, 2005

MEMORANDUM

TO: Karen Orlansky, Director
Office of Legislative Oversight

FROM: Charles R. Loehr, Director *CEL/ke*
Montgomery County Park and Planning Department

RE: Responses to Certain Legal Issues Related to OLO's Clarksburg
Town Center Fact-Finding Review

In an effort to make sure all the bases are covered, staff wanted to point out that two County Code provisions (attached) may also be relevant to answer your legal Question #2.

(1) § 59-A-3.1 confirms that the director of DPS is charged with the issuance of building permits; and

(2) § 59-A-3.34 provides, consistent with the requirement of § 8-119(a) of Article 28 of the State Code, that the director must not issue a building permit until the application has been submitted to the Commission or its designee for review for conformity with zoning requirements.

Thus, while the Commission's statement on page 3 of our response that there is no similar requirement in Chapter 8 of the County Code is correct, there is a consistent requirement in Chapter 59 of the County Code.

DYD:cmd

Attachment

cc: Adrian Gardner, General Counsel
Michele Rosenfeld, Associate General Counsel

Sec. 59-A-3.1. Building permit.

(a) Building permits generally. A building permit must be issued by the director before any building or other structure can be erected, moved, structurally altered, added to, or enlarged and before any excavation can be started. A building permit is not required for any building or structure to be used exclusively for purposes of agriculture upon land used exclusively for agriculture. However, a building permit is required for any building or structure to be used for a purpose that is not exclusively agricultural in nature, including special exception uses, even though located on otherwise agricultural land.

(b) A building permit may be issued only for proposed work that conforms to the uses and amount of development authorized under this chapter or other applicable law and for which the adequacy of public facilities is determined after:

- (1) Review of a preliminary plan of subdivision or site plan if required under this chapter or chapter 50; or
- (2) Building permit review if required under chapter 8.

59-A-3.34. Review by commission.

The Director must not issue a building permit for: (1) construction of a new principal structure; (2) construction that increases the gross floor area of an existing commercial structure; or (3) construction that substantially increases the gross floor area of any one-family structure, until the application has been submitted to the Commission or its designee for review for conformity with this Chapter.

(Legislative History: Ord. No. 13-98, § 2.)